

1 THERESA GARNER
2 1688 South 236th Drive
3 Buckeye, Arizona 85326
4 623-386-8111

5 **IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE DISTRICT OF ARIZONA**

7 THERESA GARNER,
8 Plaintiff,

Case No.: CV-16-533-PHX-DGC

9 vs.

**PLAINTIFF'S COMPLAINT
(DEMAND FOR JURY TRIAL)
(DEMAND FOR AN APPOINTED
ATTORNEY)**

10 PENNY PRITZKER, SECRETARY,
11 DEPARTMENT OF COMMERCE,
12 Defendant

13 **COMPLAINT**

14 **(Retaliation, Harassment, Race, and Discrimination in Federal Employment)**

15 **Introduction**

16 1. Plaintiff, Theresa Garner, proceeding Propria Person, brings this action pursuant to
17 Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq., to
18 remedy acts of pervasive discriminatory harassment, retaliation and hostile work
19 environment perpetrated against a federal employee by the United States Department
20 of Commerce (DOC), because of her race (African American) and (retaliation) for her
21 prior EEO activities. Plaintiff engaged in protected activities when she: (a) opposed a
22 practice she considered to be discriminatory in District Court of Arizona Case No. 12-
23 CV-01330-PHX-SRB (b) Plaintiff participated in protected activities by filing a charge
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1 of employment discrimination and cooperated with an internal formal EEO
2 investigation of alleged discriminatory practices, EEO case no. 63-2014-00069, 2014.

3 (c) An adverse action was taken resulting in multiple unjustified fraud charges from
4 false employment references to the Arizona Unemployment Office (d) An adverse
5 action was taken penalizing the Plaintiff from opposing a discriminatory employment
6 practice, the Agency adverse actions included but does not limit approving EEO hours
7 for an internal investigation, then reneging and removing the preapproved hours
8 multiple, and (e) denial of job benefits, (f) reprimands and/or threats (g) false and
9 unjustified false employment income references given to the State of Arizona
10 Unemployment Office resulting in fraud charges against the Plaintiff several times, (f)
11 unjustified negative performance evaluation, (g) failure to pay approved EEO activities,
12 and (h) harassment.

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17 2. Throughout 2014 fiscal year, Defendant arbitrarily set limits and limitations which
18 continued to change on the number of hours she may engage in EEO activities for which
19 she may be compensated. Plaintiff further asserts that the Defendant limitations,
20 fluctuated and changed to different standards throughout the year 2014, without
21 explanation or consultation.
22
23 3. Defendant justified the limitations by stating that the EEO activities should gradually
24 decrease when the investigation had just begun from incidents months prior 2014 fiscal
25 year.
26
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- 1 4. EEO activities have not been paid consistent with an Agency instruction not to
2 compensate the Plaintiff for EEO activities since March 1, 2014 and inconsistent with
3 EEO government policy and law. *See* 29 C.F.R. § 1614.103
4
- 5 5. The retaliation here caused material financial losses with reduction of income and EEO
6 activities limited, adverse actions caused directly by Defendant's retaliatory, hostile and
7 harassment conduct of more than \$80,000 damages.
8
- 9 6. The DOC continuation of harassment and retaliation increased while Defendant
10 attempted intimidation tactics demanding that the Plaintiff limit her EEO activities.
11
- 12 7. Plaintiff further asserts that the Defendant subjected Plaintiff to increased scrutiny by
13 demanding observation while working, and sabotaging the observation results.
- 14 8. The DOC selectively excluded Ms. Garner in annual benefits and sick leave, and treated
15 her unfavorably in performance evaluation, earned awards from her top performances
16 in her group in comparison to similarly situated coworkers, adversely impacting the
17 terms and conditions of her employment.
18
- 19 9. Plaintiff further asserts that management retaliated against her for having complained
20 about such discrimination, created a hostile working environment for her, harassed her,
21 caused her to suffer major stress, and punished her for testifying and participating in a
22 lawsuit 12-CV-01330-PHX-SRB.
23

24 **Jurisdiction**

- 25
- 26 10. This Court has jurisdiction over the subject matter of this civil action pursuant to Title
27 VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16. (Ongoing Continuous Doctrine)
28

Venue

11. Venue is proper in this judicial district under 42 U.S.C. Section 2000e-5(f)(3); as Plaintiff was employed by the United States Department of Commerce (DOC) in Arizona at the time of her employment as a Field Representative. Defendant has more than 500 employees. Plaintiff's employment records are maintained by the DOC in the District of Columbia, and decisions adverse to Plaintiff's employment that are the subject of this civil action were made in Lakewood, Colorado district.

Parties

12. Plaintiff, Theresa Garner, an African-American female, is a citizen of the United States and a resident of the State of Arizona. At all times relevant to this suit, she was employed with DOC as a Field Representative since October 2010 and prior federal employment.

13. Defendant Penny Pritzker is currently the Secretary of the Department of Commerce of the United States. Penny Pritzker is being sued here in her official capacity only.

14. Officials involved are Cathy L. Lacy, (Caucasian female) the Denver Regional Director (4th line supervisor), Mark Hendricks, (Caucasian male) Program Coordinator, (COR) (3rd line supervisor), Christine M. Curran, (Caucasian female) Survey Statistician Field, (FSS) (2nd line supervisor), Mark Zyniecki, Field Supervisor (FS) (Caucasian female) (1st line supervisor), Carla Mungai, Field Supervisor (FS) (Caucasian female) (1st line supervisor), within the DOC, subordinates of Cathy L. Lacy in the Denver Regional Office.

15. Plaintiff filed a timely charge of retaliation, Complaint reference date March 12, 2014, Complaint number 63-2014-00069, with the Equal Employment Office, ("EEO"), and

1 requested a Final Decision (FAD) by the Agency. The Agency investigation failed to
2 contact all witnesses or produce declarations of their testimony provided by the plaintiff.
3 A FAD, Notice of Final Order was issued January 6, 2016, received by the Plaintiff on
4 January 6, 2016. Plaintiff has met all administrative prerequisites for the bringing of this
5 lawsuit.
6

7 **Statement of Facts**

8
9 16. Plaintiff, Theresa Garner, black female, is a career federal employee with over nine
10 years of service with the Department of Commerce, (DOC) and Department of Natural
11 Resources (DNR) and Department of Labor, Bureau of Labor Statistics Dual Appointee.
12 (DOL)
13

14 17. All officials listed in paragraph 6 were immediately made aware by written notification
15 of Ms. Garner's EEO protected activities, upon notification by the EEO and Ms. Garner's
16 discrimination notifications from the onset of lawsuit, Case No. 12-CV-01330-PHX-SRB.
17

18 18. Since filing lawsuit Case 12-CV-01330-PHX-SRB against the DOC, Ms. Garner's
19 supervisors listed herein, has treated her differently and unfavorably in comparison to
20 similarly situated employees, and
21

22 19. In comparison, all of Plaintiff's coworkers in her group 2014 income was not reduced
23 by \$7000, nor was their eligibility for benefits denied, and
24

25 20. Defendant harassment, hostile work environment and retaliation is consistent with
26 previous patterns of unfounded accusations pertaining to Plaintiff's travel without the
27

Agency's permission or authorization. *See* District Court of Arizona Case No. 12-CV-01330-PHX-SRB (*See* ROI Exhibit 6, page 151-175), and

21. On or about October 2, 2014, Defendant falsified and took Plaintiff's Personally Identifiable Information(PII) and booked an airplane ticket in her name booking a flight to and from Minnesota (ROI Exhibit 6, page 151-175), and

22. On or about October 2, 2014, Defendant falsified and took Plaintiff's Personally Identifiable Information(PII) and booked a hotel stay at Staybridge Suites by Holiday Inn in her name booking a two-day stay (ROI Exhibit 6, page 151-175), and

23. Plaintiff had no such required travel scheduled or pending reservation or stay pending, the unauthorized booking is part and partial of the continuation of pattern of manufactured travel schemes documented to lure the Plaintiff into unauthorized travel ongoing since 2011/2012 more than 16 times (*See* ROI Exhibit 6, page 151-175), and

24. Defendant in order to confirm such booking with a government travel agency Carlston Travel, the Agency must confirm Plaintiff Personally Identifiable Information (PII) name, age, address to do so, (ROI Exhibit 6, page 151-175) and

25. Defendant's pretext explanation for this unauthorized booking was that another Theresa Marie Garner existed, who works for the Department of Commerce in Chicago Regional Office, where this matter originated, when no such employee exists, or existed 2014 October, working for the Department of Commerce, (ROI Exhibit 6, page 151-175) and

1 26. Plaintiff requested the Defendant to produce the employee; Defendant could not
2 produce the employee (ROI Exhibit 6, page 151-175), and

3
4 27. Defendant illegally impersonated Ms. Garner when calling into the travel agent, (ROI
5 Exhibit 6, page 151-175), and

6 28. Defendant subjected Plaintiff to intentional harassment and retaliation and hostile work
7 environment, (ROI Exhibit 6, page 151-175)

8
9 29. In comparison, all of Plaintiff's coworkers in her work group 2014 received recognition
10 and awards excluding yearly Level 3 bonuses, and similarly situated coworker were given
11 recognition, which excluded the Plaintiff who reached a high level of responses with a
12 response rate of Level 5.

13
14 30. Defendant set different terms and conditions on the Plaintiff in implementing the
15 United States Anti-Discrimination Policy and EEO pay policies.

16
17 31. Defendant reduced Plaintiff's EEO activities after the Plaintiff performed the activities
18 related to continued and ongoing harassment and her internal investigation, new incidents
19 related to the hostile environment and retaliation happening monthly.

20
21 32. Defendant have not put such restrictions on similarly situated coworkers on EEO
22 activities only restricting the Plaintiff to reduced hours for EEO activities.

23 33. Defendant set different terms and conditions in employment conditions and
24 implementing EEO activities.

1 34. Later, the DOC's official explanation for their limitation on EEO activities were that
2 the Plaintiff must provide and request days in advance approval on EEO protected activities,
3 and
4

5 35. Plaintiff's had no advance notice of Defendant's discriminatory practices but set
6 impractical illogical advance notification restrictions on the Plaintiff, limiting the Plaintiff
7 to pursuit of protected EEO activities through intimidation tactics.
8

9 36. On or about March 2014, Defendant created more limitations of 10 hours of EEO
10 activities per month with no explanation or consultation.

11 37. On or about March, 2014, Defendant failed to provide consultation and refused EEO
12 activities and pay for a 2nd time in (2) months.
13

14 38. On or about April 29, 2014, Defendant refused to pay approved in advance EEO
15 activities for a 3rd time in (2) months.
16

17 39. On or about April 2014, Defendant lowered EEO activities to 10 hours per pay period,
18 previously 10 per week, excluding pay without notice from the last change and limitation
19 without explanation or consultation.

20 40. On or about May 22, 2014, Christine M. Curran, Plaintiff 2nd line supervisor purported
21 to blame the neutral EEO Investigator, Herbert L Murray, for placing arbitrary limitations
22 on Plaintiff's EEO hours.
23

24 41. A few days later, on or about May 24, 2014, Christine M. Curran, Plaintiff 2nd line
25 supervisor blamed the *neutral* EEO employee Cynthia Shipley advising she was
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1 responsible for placing limits on Plaintiff's EEO activities and that the Agency was abiding
2 by what is supposed to be a neutral entity.

3
4 42. On March 19, 2014, Plaintiff EEO activities were eliminated and not paid even though
5 it was approved for 20 hours.

6 43. On or about April 2014, the Plaintiff requested a response from the Denver Regional
7 Office Director on the limitation changing every week and failure to pay and received no
8 response.
9

10 44. Later in May 2014, Defendant limit EEO activities to 10 hours every month without
11 consultation or explanation and used this explanation to exclude previous EEO activities
12 performed under the old standards set by the Defendant in April 2014, of 10 hours per pay
13 period.
14

15 45. On or about March 2014-May 2014, Agency official consulted with the Plaintiff
16 approved EEO hours then removed the hours having already approved the hours, then made
17 new limitations arbitrarily.
18

19 46. On or about May 22, 2014, the internal EEO investigation produced a 2000+ page
20 Report of Investigation (ROI) requesting interrogatories and other documentation, and
21

22 47. Plaintiff 2nd level supervisor Christine M. Curran arbitrary set more limits to the request
23 for Interrogatories and ROI report without consulting the Plaintiff or viewing the ROI
24 report or Interrogatory questions.
25
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1 48. On or about May 1 and 2nd, Defendant demanded that Plaintiff be observed during her
2 survey interviews, (generally observation is reserved for struggling Field Representatives),
3 Plaintiff was not struggling and has one of the best record at this time in her work group.
4

5 49. On or about June 15, 2014, 7 weeks after observation, Defendant after the observation
6 refused to give the Plaintiff her observation results and scoring.
7

8 50. On or about May 24, 2014, during and after observation, Carla Mungai, Plaintiff's 1st
9 line supervisor, attempted to delay results and attempted to sabotage the results claiming
10 there were multiple errors during her observation when there were no such multiple errors,
11 but could not produce documentation supporting this false claim, and
12

13 51. The Defendant left this false notation in the observation performance report.

14 52. After the Plaintiff on May 2014, insisted to receive the Defendant's purported errors
15 Defendant finally released Plaintiff's results, then manufactured a pretext story that while
16 Plaintiff was observed during the observation she made errors but corrected them while
17 interviewing.
18

19 53. Later after the fiscal year ended October 1, 2014, Defendant gave Ms. Garner the
20 lowest unwarranted customer service score without any recorded deficiencies, lowered her
21 Level 5 performance to the minimal lowest score Level 3, even though her observation had
22 no verifiable deficiencies nor could the Defendant produce any deficiencies when
23 requested.
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1 54. Defendant continuously and ongoing has treated Plaintiff unfavorably for having
2 participated in protected activities, in comparison to similarly situated Field
3 Representatives with undeserved unjustifiable unexplained lowered ratings scores.
4

5 55. Defendant's pretextual explanation of failing to provide the Plaintiff a timely
6 observation and notification of results were that Field Representatives do not receive their
7 observation or any information on how they were doing in the Field.
8

9 56. June 2014, Defendant began lowering Plaintiff workload to 3 cases, Plaintiff workload
10 typically averages 8, @ 4.99 hours per case @ \$19 dollars per hour.
11

12 57. Defendant lowered Plaintiff's pay for the entire month amounting to less than \$300.
13

14 58. On or about June 18, 2014, the unemployment office (Department of Unemployment)
15 reported fraud overpayment lodged against the Plaintiff when the Agency provided
16 inaccurate information regarding Plaintiff's earnings reporting to the Unemployment office
17 mileage which is not countable wages; based upon this false information provided fraud
18 charges were leverage against the Plaintiff.

19 59. On or about June 18, 2014, the Agency provided inaccurate information regarding
20 Plaintiff's earnings reporting to the Unemployment office mileage which is not countable
21 wages; based upon this false information provided fraud charges were leverage against the
22 Plaintiff.
23

24 60. On or about August 2014, the unemployment office (Department of Unemployment)
25 reported fraud overpayment lodged against the Plaintiff when the Agency provided
26 inaccurate information regarding Plaintiff's earnings reporting to the Unemployment office
27
28

1 mileage which is not countable wages; based upon this false information provided fraud
2 charges were leverage against the Plaintiff.

3
4 61. On or about September 2014, the unemployment office (Department of
5 Unemployment) reported fraud overpayment lodged against the Plaintiff when the Agency
6 provided inaccurate information regarding Plaintiff's earnings reporting to the
7 Unemployment office mileage which is not countable wages; based upon this false
8 information provided fraud charges were leverage against the Plaintiff.
9

10 62. On about September 2014, Officials at the Denver Regional Office notified Plaintiff
11 1st line supervisor that Ms. Garner resigned when she did not and asked her to send in a
12 letter of resignation.
13

14 63. On about June 2014, Plaintiff 1st line supervisor Mark Zyniecki provided the entire
15 Denver Regional Office Plaintiff's unemployment status from another employment
16 confidential information violating the need to know policy and Privacy Act, and
17

18 64. When the Defendant received information of Plaintiff's employment status they began
19 lowering her workload and hours.
20

21 65. Throughout 2014, and on about June 15, 20014, Defendant placed Ms. Garner entire
22 workload of 16 cases under supervisory review and held Ms. Garner to standards and
23 increase scrutiny that similarly situated Field Representatives were not held to.
24

25 66. Throughout the entire year of 2014, Defendant set an unrealistic expectation that
26 Plaintiff's EEO activities should diminish, when hostile work environment, and harassment
27 increased.
28

1 67. Throughout the entire year 2014, after having held Ms. Garner to high scrutiny the
2 Regional Office provide Ms. Garner with the lowest performance score even though all 16
3 cases and most of her work was reviewed with no deficiencies.

4
5 68. Defendant placed a data collection device on Plaintiff's laptop subjecting her to
6 increased scrutiny, and

7
8 69. Plaintiff's coworkers in comparison have not been subjected to this increased scrutiny.

9 70. On or about October 6, 2014, Plaintiff requested sick leave under employees with
10 uncommon tours of duty.

11 71. Defendant denied Plaintiff sick leave and failed to provide a legitimate explanation for
12 denying sick leave for the Plaintiff uncommon tour of duty status.

13
14 72. On or about October 7, 2014, Plaintiff provided Defendant 5 U.S.C. 6307, 5 CFR part
15 630, subpart B and D, basis for her sick leave request to the Defendant, Defendant failed
16 to address uncommon leave.

17
18 73. Ms. Garner maintained one of the highest levels of performance in her group, but
19 received no bonuses (with the exception of the year-end bonus every person over Level 3
20 receives) no awards, lowered her overall performance scores to Level 3.

21
22 74. Plaintiff has EEO activities of 174 hours unpaid of EEO activities directly caused by
23 Defendant harassment, hostile work environment and retaliation.

24
25 75. The DOC's discriminatory/retaliatory treatment caused Ms. Garner to suffer from panic
26 attacks and depression. Circa 2014, Plaintiff Garner's doctor recommended that she

1 telework, because the hostile work environment was causing her to suffer from both Major
2 Depression and Generalized Anxiety Disorder.

3
4 76. On or about June 27, 2014, Defendant reduced Plaintiff EEO activities after having
5 approved the EEO activities. (R.O.I. Exhibit 7, Page 18)

6
7 77. On or about July 17, 2014, Defendant reduced Plaintiff EEO activities to answer a set
8 of Interrogatories and failed to consult with the Plaintiff. (R.O.I. Exhibit 7, Page 15)

9
10 77. Defendant excluded the Plaintiff from year-end bonus (excluding Level 3 and above
11 bonus for all Field Representatives)

12
13 78. On or about 4/14/2014 pay for EEO activities for pay period 6 was not paid, no
14 explanation by the Defendant who deleted pay.

15
16 79. On or about 3/30/2014 pay for EEO activities for pay period 6 was not paid, no
17 explanation by the Defendant who deleted pay.

18
19 80. On or about 4/5/2014 pay for EEO activities for pay period 6 was not paid, no
20 explanation by the Defendant who deleted pay.

21
22 81. Plaintiff received in writing approval for 10 hours for EEO response to interrogatories
23 by never paid and removed by the Defendant.

24
25 82. Defendant on or about 4/16/2014, began to set limitations on the Plaintiff's EEO
26 activities to 10 hours, having previously notified the Plaintiff of 10 hours per week.

27
28 **Count One**

(Racial Discrimination in Violation of Title VII of the Civil Rights Act of 1964, 42

USC 2000e. et seq.)

1 83. The foregoing paragraphs are realleged and incorporated by reference herein.

2 84. The Defendant's conduct as alleged at length herein constitutes discrimination based
3 on race in violation of Title VII. The stated reasons for the Defendant's conduct were not
4 the true reasons, but instead were pretext to hide the Defendant's discriminatory animus.
5

6 **Count Two**

7 **(Reprisal for Engaging in Protected Activities)**

8
9 85. The foregoing paragraphs are realleged and incorporated by reference herein.

10 86. The Defendant's conduct as alleged above constitutes retaliation against the Plaintiff
11 because she engaged in activities protected by Title VII. The stated reasons for the
12 Defendant's conduct were not the true reasons, but instead were pretext to hide the
13 Defendant's retaliatory animus.
14

15 **Count Three**

16 **(Hostile and Abusive Working Environment)**

17
18 87. The foregoing paragraphs are realleged and incorporated by reference herein.

19 88. The Defendant's conduct as alleged above constitutes hostile and abusive working
20 environment in violation of Title VII. The stated reasons for the Defendant's conduct were
21 not the true reasons, but instead were pretext to hide the Defendant's discriminatory animus.
22

23 **Prayer for Relief**

24 WHEREFORE, the Plaintiff requests that the court award her:

25
26 (a) Retroactive back pay with all attendant back pay, and other emoluments of
27 employment.
28

(b) A retroactive back pay award of \$7,500, and prejudgment interest and other emoluments of employment.

(c) The sum of \$300,000 in compensatory damages suffered because of the retaliation, harassment, hostile work environment and discrimination.

(d) Front pay,

(e) Thrift Saving earned matching and contributions at a rate of 5% matching, but for DOC management's discriminatory/retaliatory treatment of her; and

(f) Costs and reasonable attorneys' fees incurred with this lawsuit with interest thereon; and

(g) Other damages and further relief as deemed just.

JURY DEMAND

The Plaintiff requests trial by jury, Rule 38(a) of the Federal Rules of Civil Procedure.

DEMAND FOR AN APPOINTED ATTORNEY

The Plaintiff requests an appointed attorney. § 706(f) (1) of the Act, 42 U.S.C. § 2000e-5(f) (1), § 706(k), 42 U.S.C. § 2000e-5(k) of the Fed.R.Civ.P.

Respectfully Submitted,



Propia Persona
1688 South 236th Drive
Buckeye, Arizona 85326
Tel. 623-386-8111

CERTIFICATE OF SERVICE BY PROCESS SERVICE

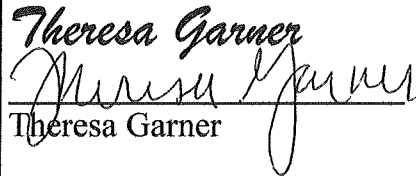
I, Theresa Garner, state that I am the plaintiff in this action and that have serviced by Process

1
2 Service the attached complaint and summons, 2/26/2016 to:

3 John S. Leonardo
4 U.S. Attorney
5 Two Renaissance Square
6 40 N. Central Avenue
7 Phoenix, AZ 85004-4408
8 602-514-7400

9 U.S. Department of Commerce
10 Penny Pritzker, Secretary
11 1401 Constitution Ave., NW
12 Washington, D.C. 20230

13 U.S Department of Justice
14 United States Attorney General
15 Loretta Lynch
16 950 Pennsylvania Avenue, NW
17 Washington, DC 20530

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Theresa Garner